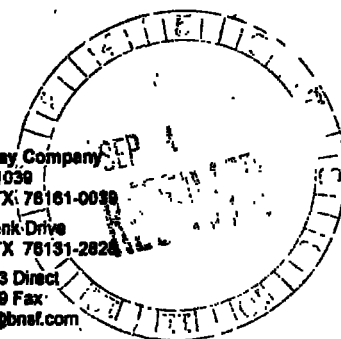




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September 4, 2012.

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

SEP 04 2012

Part of
Public Record

232914

Re: STB Docket No. 38302S: U.S. Department of Energy and U.S. Department of
Defense v. Baltimore & Ohio Railroad Company, et al.

232915

STB Docket No. 38376S: U.S. Department of Energy and U.S. Department of
Energy and U.S. Department of Defense v. Aberdeen & Rockfish Railroad
Company, et al.

Dear Ms. Brown:

Enclosed for filing in the above captioned dockets is the Joint Motion of the U.S.
Department of Energy, the U.S. Department of Defense and the BNSF Railway Company for
Approval of Settlement Agreement and Prescription of Rate Methodology.

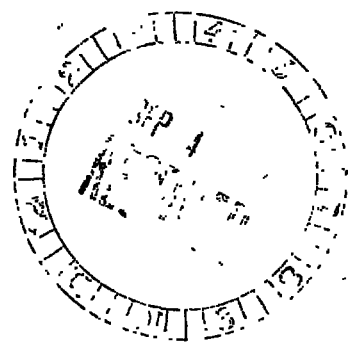
Please date-stamp the three extra copies of this filing and return them to us through our
messenger. Thank you for your attention to this matter.

Sincerely,

Jill K. Mulligan

Cc: Stephen C. Skubel
Terrence A. Spann

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



U.S. Department of Energy
and
U.S. Department of Defense

v.

Baltimore & Ohio Railroad Company, et al.

Docket No. 38302S

U.S. Department of Energy
and
U.S. Department of Defense

v.

Aberdeen & Rockfish Railroad Company, et al.

Docket No. 38376S

**JOINT MOTION OF THE U.S. DEPARTMENT OF ENERGY,
U.S. DEPARTMENT OF DEFENSE, AND BNSF RAILWAY COMPANY
FOR APPROVAL OF SETTLEMENT AGREEMENT AND
PRESCRIPTION OF RATE METHODOLOGY**

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Dated: September 4, 2012

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**Part of
Public Record**

U.S. Department of Energy
and
U.S. Department of Defense

Docket No. 38302S

Docket No. 38376S

**JOINT MOTION OF THE U.S. DEPARTMENT OF ENERGY,
U.S. DEPARTMENT OF DEFENSE, AND BNSF RAILWAY COMPANY
FOR APPROVAL OF SETTLEMENT AGREEMENT AND
PRESCRIPTION OF RATE METHODOLOGY**

The U.S. Department of Energy and the U.S. Department of Defense (“DOE/DOD,” or the “Government”), and BNSF Railway Company (“BNSF”), parties to the above-captioned proceedings, join in presenting this motion asking the Board to approve their Settlement Agreement attached hereto and to prescribe the rate methodology set forth therein.

This is a global settlement between the Government and BNSF, settling all matters in controversy between the parties, and, therefore, the Government and BNSF join in seeking dismissal of BNSF as a party and the extinguishment of BNSF's liability for any matters arising

in connection with these proceedings.

The Government and BNSF have attached a copy of their Settlement Agreement dated August 30, 2012, as Exhibit A. They have also attached a proposed Order as Exhibit B and a proposed Federal Register Notice as Exhibit C.

The Government and BNSF stress that their settlement was reached between well-informed parties with expert advisers after many years of negotiations. The settlement they have reached is for the sole purpose of resolving the issues between them in these proceedings and is not binding upon them in other proceedings in which they may be or become involved or for any other purposes.

A. Summary Of Action Requested From The Board

1. The Government and BNSF request the Board to approve their Settlement Agreement without prejudice to the Government complaints and other actions insofar as they involve all other carriers in these proceedings.¹

2. The Government and BNSF ask the Board to prescribe the rate methodology and the maximum revenue-to-variable cost ("R/VC") ratios to which they have agreed for the commodities and rail services that are the subject of the Settlement Agreement.

3. The Government and BNSF ask the Board to dismiss BNSF as a defendant in these proceedings,² and to take other steps which will be described herein to eliminate any

¹ The Government filed two complaints regarding the same commodities on March 27, 1981. The complaint in Docket No. 38302S, seeking reparations was served on 21 major railroads. The complaint in Docket No. 38376S, seeking rates for the future, was served on local agents for the rail industry.

² The Settlement Agreement calls for dismissal of BNSF as a party from both Docket Nos. 38302S and 38376S. BNSF should thus be dismissed as a party from the Government's pending motion to sever and consolidate tariff questions, filed Oct. 3, 1994, and the pending Petition of the Railroad Defendants to Dismiss the Complaints in Nos. 38302S and 38376S, filed on or about January 16, 1996.

requirement that BNSF participate further in these proceedings.

4. The Government and BNSF request the Board to extinguish BNSF's liability for reparations in all matters arising out of these proceedings.

5. The Government otherwise asks the Board to retain jurisdiction and to continue to hold the remainder of these proceedings in abeyance pending further settlement negotiations.

B. Commodities Involved

These proceedings involve nationwide Government movements of:

- irradiated fuel elements known as spent fuel, including radioactive parts and constituents, and spent nuclear fuel moving from a foreign country to the United States for disposal;
- empty return, shielded, containers or "casks";
- radioactive waste materials; and
- buffer cars and escort cars accompanying loaded movements.

Due to the heavy weights of the casks that are used to move the spent fuel (as much as 100 tons per container), the Government long ago agreed with the railroads that the loaded movement and the empty return movement should be costed and priced as separate movements. This form of costing and pricing continues in the Settlement Agreement.

The movements in issue in these proceedings are nationwide except for excluded local movements originating and terminating in the East (former Official Territory). The Interstate Commerce Commission ("ICC") prescribed a local and proportional Eastern rate basis some

years ago,³ and that rate basis is not in issue.

C. Railroad Rates And Services At Issue

1. The railroad rates for regular common carrier freight train service for the commodities listed above are in issue in these proceedings. The parties to these proceedings have for many years disputed whether spent fuel can safely move in regular train service. That controversy, briefly described in the footnote,⁴ was litigated in proceedings before the ICC, and it has not been reopened in the settlement discussion. The parties fully accept those decisions of the ICC for the purposes of this Joint Motion.

2. In a motion filed October 3, 1994, the Government asked the ICC to sever the issues relating to the quantity of service, including the number of routes open for moving radioactive materials nationwide. The ICC had earlier found that the cancellation by the Southern and Western carriers of their participation in the Uniform Freight Classification ("UFC") on spent fuel without reestablishing other rates and service was in conflict with prior Commission decisions barring flagouts from the UFC.⁵ The Settlement Agreement applies to transportation over BNSF rail lines as defined therein.

³ I & S Docket No. 9205, Trainload Rates on Radioactive Materials, Eastern Railroads, 362 ICC 756 (1980), 364 ICC 981 (1981), sustained sub nom. Consolidated Rail Corp. v. ICC, 646 F.2d 642 (D.C. Cir. 1981), cert. denied, 459 U.S. 1047 (1981).

⁴ When the carriers operating in the South and West filed tariffs requiring spent fuel and radioactive waste shipments to move only in special trains, rather than in regular freight train service, the ICC disapproved. Radioactive Materials, Special Train Service, 359 ICC 70 (1978). The ICC later awarded the Government reparations for the mandatory special train charges. U.S. Dep't of Energy v. Baltimore & Ohio Railroad Co., 364 ICC 951 (1981), appeal dismissed sub nom. Consolidated Rail Corp. v. ICC, 685 F.2d 687 (D.C. Cir. 1982). When the Government sought to enforce the reparations order in court, the Government settled, with the railroads paying the Government \$8 million of reparations. Special or dedicated trains remain shipper options under the Settlement Agreement unless cars fail to meet certain future standards for head-end movement described in paragraph 13.C. of the agreement.

⁵ US Dep't of Energy, et al. v. Baltimore & Ohio Railroad Company, et al., 10 I.C.C.2d 112, 149 (1994).

3. The parties' agreement addresses the elements of service required of BNSF in moving spent fuel. The Settlement Agreement specifically describes some of the elements of service that are included in the rate for basic service under the Agreement (*e.g.*, paras. 4 and 6.A.). The Settlement Agreement rests on the common carrier obligations of BNSF, and at the same time addresses and resolves issues relating to more specific elements of required services.

4. Also in issue in these proceedings is whether there are any special handling or other services required of nuclear commodities for which the carriers are entitled to separate and additional compensation above the line haul rates and charges. Ancillary services requested by the shipper would potentially become an issue in the absence of an agreement. The Settlement Agreement addresses and resolves the issue of rates for extra services in paragraph 6.B.

D. The Settlement Completes A Complex Proceeding With Respect To A Major Defendant

1. The underlying complaints in Docket Nos. 38302S and 38376S were filed in 1981 under Section 229 of the Staggers Rail Act of 1980.⁶ These are the last of the hundreds of complaints filed under that section.

2. The Government first began shipping spent fuel in shielded casks in the 1950's. In that period the shipments moved under quotations issued under former Section 22 of the Interstate Commerce Act (predecessor of 49 USC 10721) as "chemicals" or other descriptions. In 1962 the Southern and Western railroads requested special permission from the ICC to file class rates that remained in effect until 1988 and were in effect at the time of the filing of the present complaints.

3. The movements that have been actively litigated since 1981 have involved nationwide

⁶ Section 229 was codified in a note to 49 U.S.C. §10701a.

shipments of naval spent fuel, empty casks, and radioactive waste.

4. The shipping containers or “casks” for spent fuel and high level radioactive waste are built to contain the radioactivity and to withstand stringent impact, drop, and fire tests mandated by the U.S. Department of Transportation and the U.S. Nuclear Regulatory Commission. These massive casks constructed of lead and stainless steel themselves weigh considerably more than the load of spent fuel they are designed to hold. Such loads have moved by rail for over 50 years without any injury or fatality attributable to the radioactive nature of the commodity.

5. In 1986, the ICC ruled in Dockets 38302S and 38376S that the railroad parties were engaging in an unreasonable practice by imposing certain cost additives to their rates for transporting spent fuel and empty casks. The ICC prescribed new rates and charges and awarded the Government reparations.⁷ The Court of Appeals overturned the decision on the ground that the proceedings should have been handled as a rate reasonableness case, not an unreasonable practice case, and remanded for additional proceedings.⁸

6. On remand, the ICC reopened the proceeding with the Government departments as the sole remaining complainants.⁹ Much new evidence and argument was presented by the parties under an overall R/VC test and an inquiry into comparable commodities, including whether the commodities in issue were “recyclables” that were entitled to the specially reduced rates Congress had mandated at that time for such shipments. In 1994, the ICC ruled that some of the

⁷ Commonwealth Edison v. Aberdeen & Rockfish R.R., 2 ICC2d 642 (1986).

⁸ Union Pacific R. Co. v. ICC, 867 F.2d 646 (D.C. Cir. 1989).

⁹ The Court of Appeals concluded that the private utility shippers, originally joined as parties to the proceedings, had not shown market dominance necessary for ICC jurisdiction. and the ICC dismissed them as parties. 867 F.2d at 649-50. The railroads on that appeal conceded market dominance in the case of Government shipments. *Id.* at 649

commodities were recyclables, but directed the parties to present additional evidence.¹⁰ In the ICC Termination Act of 1995, Congress repealed the special rates for recyclables. The carriers in 1996 filed a petition with this Board under the new statute to dismiss the Government's complaints. The petition is still pending, but was mooted for one party, Union Pacific Railroad Company, pursuant to a settlement with the Government which this Board approved by an order entered in these dockets July 27, 2005 (served August 2, 2005) ("August 2005 Decision"), and effective September 1, 2005). The petition will be similarly mooted as to BNSF after the Board's approval of the Settlement Agreement.

E. Proceedings Have Been Held In Abeyance Pending Settlement Negotiations

1. The proceedings now before the Board have been held in abeyance pending settlement negotiations, which began as an industry-wide effort with all major railroads. It was found, however, as the parties entered into rate discussions, that antitrust concerns required them to undertake meaningful negotiations on a carrier-by-carrier basis.

2. The settlement with Union Pacific Railroad ("UP") successfully resolved all rate-setting, shipping, and service determinations between UP and the Government, and has governed those parties' relationship since the date it took effect, without substantial issue. That settlement has served as a model to the Government for the current Settlement Agreement with BNSF.

F. The Agreement Is Substantially Similar To The UP Settlement That Was Approved By the Board

1. As outlined in G below, the Settlement Agreement between the Government and

¹⁰ 10 ICC2d 112, *supra* note 5.

BNSF is substantially similar to the Government's agreement with UP. While adopting the rate structure and principal terms of that agreement, the Settlement Agreement with BNSF also improves upon that document in certain ways by:

- Streamlining unnecessarily redundant clauses and sample forms, and omitting clauses made irrelevant by differences between UP and BNSF's areas of service.
- Clarifying or elaborating upon definitions and accepted practices (e.g., providing examples of exemptions, or detailing plans for yearly forecasts).
- Revising clauses to account for advancements in technological communications and to reference an updated Uniform Rail Costing System.
- Making explicit certain legal standards applicable regardless of their inclusion in the Agreement (e.g., compliance with applicable safety rules, adherence to any modification of methodologies implemented by the Board, and BNSF's obligations in the event of a lapse in the Price Anderson Act).

2. One substantive difference between the UP agreement and this Agreement warrants mention. While the UP agreement had an unlimited term, the BNSF Settlement Agreement provides for a term of 25 years, with the possibility of extensions.

G. Precis Of The Settlement Agreement

1. The parties' goal in their negotiations was to achieve a long-term, system-wide agreement on all rate and service issues relating to spent fuel and related traffic now moving or likely to move in the next 25 years, with the possibility of extension for 5-year periods thereafter, subject to a 1-year termination notice requirement. The parties have succeeded in developing a comprehensive settlement on the movement of Government-sponsored shipments of spent fuel, radioactive waste, and related traffic. The Settlement Agreement applies to currently moving

traffic and to traffic that may arise in the next 25 years, for which new rates may be needed (para. 25). In addition, the Settlement Agreement was structured so that it would cover movements to or from unanticipated geographic areas or in as-yet-unknown types of equipment.

2. The parties have reached agreement on a rate methodology based on maximum R/VC markups over BNSF's system-average variable costs computed under the Uniform Rail Costing System ("URCS") for common carrier service (para. 6). The rate methodology applies to movements on BNSF's rail lines.

3. The parties have reached agreement on the need for reliable service. The Settlement Agreement specifically discusses elements of the "Basic Services" covered in para. 4, without attempting to resolve the cost of all future service.

4. The parties established rates for "Basic Services" at agreed markups over URCS variable costs, as described in paragraph 6.A. The rate methodology is set forth in detail in Attachment Nos. 1 and 2 to the Settlement Agreement.

5. The parties agreed that they will separately negotiate rates for "Extra Services," which are activities or services that BNSF would not otherwise perform without extra charge in providing common carrier service for hazardous materials, under guidelines described in paragraph 6.B. and the methodology of Attachment No. 3 to the Settlement Agreement.

"Equitable compensation" is the governing standard between the parties under the Settlement Agreement to compensate BNSF for emergency responses (para. 6.C.). Specific security measures are set forth in paragraph 10 of the Settlement Agreement.

6. In the event of future disagreement regarding any aspect of the Settlement Agreement, paragraph 15 provides a detailed mechanism for Alternative Dispute Resolution. The parties preserved a role for the Board if disputes that arise cannot be resolved through the Alternative

Dispute Resolution process. The parties may avail themselves of remedies in other forums only for disputes outside the exclusive or primary jurisdiction of the Board.

7. Under paragraph 25, the Settlement Agreement may be renegotiated if circumstances change in ways that render its continued performance “grossly inequitable” to either party and in a limited number of other circumstances. The parties’ belief that the Settlement Agreement covers most eventualities is confirmed in this provision, which allows renegotiation only in limited circumstances.

8. The Settlement Agreement is between the Government, as a shipper, and one railroad, BNSF. No private shippers are parties to the proceedings in these dockets.¹¹ However, as the parties suggest more fully below, the public should be notified of the proposed settlement through publication of an appropriate notice of this Joint Motion and the filing of the Settlement Agreement in the Federal Register prior to the Board’s reaching a decision thereon.

9. The parties share the view that the Settlement Agreement is in both parties’ interest, that it is in the public interest, and that it should be approved by this Board.

10. The Settlement Agreement does not purport to resolve any of the issues discussed above for any of the other remaining defendants. As the STB determined with respect to the Government’s settlement with UP, the terms and obligations of the Government’s settlement with BNSF will be binding only between the Government and BNSF and will not have precedential effect regarding the reasonableness of other railroad parties’ rates or their common carrier obligations. August 2005 Decision at 6.

H. The Board Has Jurisdiction To Approve The Settlement Agreement

¹¹ See footnote 9, *supra*.

1. For purposes of this Joint Motion and the Settlement Agreement only, BNSF concedes that the Board has jurisdiction to approve the Settlement Agreement and to prescribe rates that encompass naval, commercial, and foreign research reactor spent fuel, waste shipments, and other related shipments made by or for the Government. This concession is in keeping with the holding in Union Pacific R.R. v. I.C.C., 867 F.2d at 649, that a concession of market dominance removes that issue from the proceedings.

2. Settlement of railroad rate and service controversies that have been pending for long periods before this agency and the ICC, its predecessor agency, well serves the rail transportation policy of 49 U.S.C. § 10101. Consistent with Section 10101(1), the Settlement Agreement allows to the maximum extent possible for competition and demand for services to establish reasonable rates. It minimizes Federal regulatory control, consistent with Section 10101(2). It also promotes an efficient rail transportation system, ensures the development and continuation of a sound rail transportation system, and fosters sound economic conditions in transportation. See 49 U.S.C. §§ 10101(3)-(5).

3. Similarly, Board policy incorporates and expressly promotes the settlement of controversies between contesting parties. In his testimony before the Senate Committee on Commerce, Science, and Transportation, Board Chairman Daniel R. Elliott III described his commitment to “foster[ing] private settlement of rail-related disputes,” *Hearing on the Federal Role in National Rail Policy*, 6 (September 15, 2010), and to applying the Board’s expertise to mediation and arbitration processes in an effort to “expand[] the culture at the agency from one of merely judicial decision maker to one of engaged problem solver....” *Id.* at 3. He also stated, “I believe that business partners usually reach a more constructive result when they can settle their disputes privately, without litigation,” *id.* at 6, and has expressed the belief that “[b]ringing

a rate or other case should be a choice of last resort.” *Remarks prepared for Association of Transportation Law Professionals*, 3 (June 28, 2010).

4. While some of the movements covered by the Settlement Agreement are and will be local movements on BNSF, the majority will be interline movements involving two or more participating carriers. The Board, like the ICC before it, has jurisdiction to entertain and approve settlement terms for a carrier participating in a through rate and service. Ford Motor Co. v. ICC, 714 F.2d 1157 (D.C. Cir. 1983); August 2005 Decision at 5-6. In cases involving a challenge to a through rate, the Board may permit the dismissal of one party without jeopardizing the complainant's right to proceed against the remaining joint defendants and to forego reparations from the settling carrier. *Id.*

5. The Settlement Agreement will be implemented by BNSF's tendering rate quotations to the Government pursuant to 49 U.S.C. § 10721 or its successor. Thus, no contract rates are involved here.¹² All the rates under the proposed methodology that the Board is asked to approve will be common carrier rates, which are fully subject to Board oversight for rate reasonableness.¹³

I. The Board Should Extinguish BNSF's Liability For Reparations

1. Extinguishment of BNSF's liability is an important element of the settlement. The Settlement Agreement is expressly contingent on the Board's extinguishing BNSF's liability for reparations on past shipments of Covered Movements in which it participated (para. 23).

2. Full and fair settlement has been reached on BNSF's liability for reparations on past

¹² No contract rate is involved in the issuance of tenders under Section 10721. Omaha Public Power District v. Burlington Northern, 3 I.C.C.2d 123, 133-34 (1986).

¹³ See Union Pacific R.R. v. ICC, *supra* note 8, 867 F.2d at 652.

shipments. The parties agree that the Board, in approving the Settlement Agreement, should extinguish BNSF's liability for reparations on all past shipments both insofar as the Government shipper is involved and insofar as any connecting carrier may seek contribution. However, the Agreement also serves the public interest by not prejudicing the Government's right of action against any remaining defendant. August 2005 Decision at 5-6.

J. The Board Should Relieve BNSF Of Any Requirement To Participate Further As A Party In These Proceedings

The Settlement Agreement is contingent upon the Board's relieving BNSF of any further obligation to participate as a party in future, related, rate or reparation proceedings involving the Government or the remaining defendants (para. 14). The Government has agreed not to name BNSF as a party, although any right to request subpoenas for BNSF data and documents is reserved should it be required to prove the unreasonableness of rates not subject to this Settlement Agreement. The Board can expressly endorse this provision of the Settlement Agreement by (i) expressly approving the non-participation clause of para. 14 of the Agreement, and (ii) ruling it will not entertain cross-complaints under 49 CFR 1111.4(c) against BNSF in proceedings involving DOE/DOD claims for reparations against connecting carriers.

K. The Board Should Prescribe The Agreed-Upon Rate Methodology

1. The parties ask the Board to prescribe the rate methodology described in the Settlement Agreement, specifically in paragraph 6 and Attachments 1, 2, and 3 to the Settlement Agreement, as well as in the rate update provisions of paragraph 7. By agreeing to an overall rate methodology, the parties ensure a solution to the issue of rates for BNSF's services that will last the full term of the Agreement. August 2005 Decision at 5.

2. The requested prescription is consistent both with the Eastern Rate prescription of 1 &

S Docket 9205 for these commodities¹⁴ and the agreement with Union Pacific Railroad Company approved by the Board in 2005. In the Eastern Rate proceeding, the ICC prescribed maximum R/VC's on a commodity by commodity basis at various minimum weights as local and proportional rate factors applicable within the East, although most movements were through movements destined beyond the lines of the carriers covered by the prescription. Similarly, here the settlement covers but one factor in what are most often through rates. The present settlement essentially broadens the Eastern Rate model to include radioactive shipments of varying weights in varying types of service and equipment with the object of providing for BNSF rates and service for the term of the Agreement into the long-term future. The rate structure agreed to here is consistent with that approved by the Board as to Union Pacific.

3. The flexibility provided in the service parameters and rate methodology is needed in view of the number and variety of the covered commodities, and the continuing evolution of the origins and destinations for these commodities nationwide. The parties anticipate that the Settlement Agreement will effectively address service features, rate methodology, and update mechanisms for all covered commodities shipped on behalf of the government on BNSF rail lines, for the duration of the current Settlement Agreement, with the possibility of extension into future agreements.

L. The Board Should Establish A Procedural Schedule To Allow Interested Parties To Comment On The Request For Approval Of The Settlement Agreement

The Government and BNSF believe that it would be appropriate under the circumstances to provide the public with notice and an opportunity to comment on their request for Board approval of their Settlement Agreement. Accordingly, we respectfully request that, as soon as

¹⁴ I&S Docket 9205, *supra* note 3.

reasonably possible, the Board publish a notice of the parties' request in the Federal Register. A suggested form of Notice is attached as Exhibit C. We suggest that comments on the parties' request (including any argument or evidence supporting or opposing approval of the Settlement Agreement) be due 45 days later, with the parties' rebuttal in support of their request (if any) due 30 days thereafter. The proposed schedule would provide interested persons a full and fair opportunity to comment on the parties' request.

The parties' request and the actions to be taken pursuant to a Board order approving the Settlement Agreement do not constitute a major Federal action within the meaning of the National Environmental Policy Act, 42 U.S.C. §§ 4332 *et seq.*, as defined by 40 C.F.R. § 1508.18 and applied by the Board in 49 C.F.R. § 1105.5. Nor does the requested action by the Board constitute a major regulatory action within the meaning of the Energy Policy and Conservation Act, 42 U.S.C. § 6362(b), or the Board's regulations in 49 C.F.R. Part 1105.

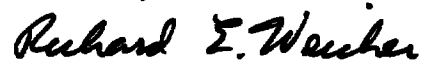
CONCLUSION

On the basis of the foregoing Joint Motion and the attached Settlement Agreement, the Government and BNSF ask the Board to:

1. Publish notice in the attached form of notice of the filing of this Joint Motion in the Federal Register;
2. Establish the procedural schedule described above;
3. Adopt the attached Order approving the Settlement Agreement, and specifically,
 - (a) prescribe the rate methodology,
 - (b) dismiss BNSF from these proceedings,
 - (c) extinguish BNSF's liability for reparations, and

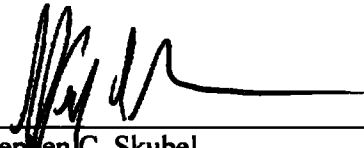
(d) relieve BNSF from any further requirement to participate in these proceedings, except in response to a properly issued subpoena under the Board's rules.

Respectfully submitted,



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Counsel for U.S. Department of Defense

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2012, copies of the foregoing Joint Motion have been served by prepaid first-class mail on counsel for the major carrier parties of record and counsel for other parties participating in related proceedings by mailing copies to the following:

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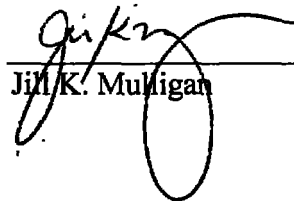

Jill K. Mulligan

EXHIBIT A

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

BETWEEN

**U.S. DEPARTMENT OF DEFENSE
U.S. DEPARTMENT OF ENERGY**

AND

BNSF RAILWAY COMPANY

IN

**DOCKET NO. 38302S, U.S. DEPARTMENT OF ENERGY AND
U.S. DEPARTMENT OF DEFENSE V. BALTIMORE AND OHIO
RAILROAD CO., ET AL.,**

**DOCKET NO. 38376S, U.S. DEPARTMENT OF ENERGY AND
U.S. DEPARTMENT OF DEFENSE V. ABERDEEN AND
ROCKFISH RAILROAD CO., ET AL.**

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ATTACHMENTS

METHODOLOGY FOR DETERMINING SHIPMENT COSTS FOR BASIC SERVICES..... NO. 1

DETERMINATION OF SYSTEM-AVERAGE FACTORS AND UNIT COST FACTORS..... NO. 2

METHODOLOGY FOR DETERMINING LABOR CHARGES FOR EXTRA SERVICES NO. 3

TABLE OF ABBREVIATIONS

AAR	Association of American Railroads
ADR	Alternative Dispute Resolution
BNSF	BNSF Railway Company
CFR	Code of Federal Regulations
DOD	United States Department of Defense
DOE	United States Department of Energy
DOT	United States Department of Transportation
FRA	Federal Railroad Administration
GSA	General Services Administration
NRC	United States Nuclear Regulatory Commission
STB	United States Surface Transportation Board
URCS	Uniform Rail Costing System
USC	United States Code

SETTLEMENT AGREEMENT

The United States Department of Energy ("DOE") and the United States Department of Defense ("DOD") (collectively, "the Government") and BNSF Railway Company ("BNSF"), parties to these proceedings, hereby agree to settle all claims of the Government against BNSF and its predecessor railroads and all issues between these parties remaining for decision in these proceedings in accordance with the terms and conditions set forth below.

1. DEFINITIONS.

A. Commodities. The parties intend by this Settlement Agreement to settle all rate, service, practice, and other issues in and related to these proceedings for all past and future movements over the lines of BNSF by or for the Government, including naval, utility, and all other shipments of the following commodities:

- (1) nuclear reactor fuel elements, irradiated and requiring protective shielding, also known as spent fuel, as well as irradiated parts or constituents, in shielded containers or casks including spent nuclear fuel moving from a foreign country to the United States for disposal ("Foreign Fuel");
- (2) empty shielded containers or casks for shipping or handling spent fuel or irradiated parts or constituents and having residual radioactivity;
- (3) radioactive waste materials having no reclamation value and requiring either a) protective shielding or b) labeling, marking, or placarding; and

(4) escort and buffer cars used in connection with shipments of any of the commodities listed above.

B. Covered Movements. All such shipments referenced in subparagraph 1.A.(1) through 1.A.(4) will be referred to collectively in this Settlement Agreement as "Covered Movements," provided however that Covered Movements do not include (i) shipments exempted at the time of movement from the regulation of the United States Surface Transportation Board ("STB") or its predecessor pursuant to 49 U.S.C. § 10505, or (ii) shipments substantially greater than "Plate F" dimensions that weigh in excess of the weight limitations specified in paragraph 8.A. If the parties are unable to agree as to whether a particular shipment is substantially greater than "Plate F" dimensions, either party may seek to resolve the dispute pursuant to the procedures set forth in Section 15 below. Weight and dimensions are subject to BNSF Engineering approval prior to movement.

C. Government Shipper. "Government Shipper" includes the Government or a Government-designated shipper or receiver, provided however, that (i) such Government-designated shipper or receiver shall only be a Government contractor or subcontractor unless BNSF consent is obtained; or (ii) such Government-designated shipper shall only include utility shippers and utility shipments when title to the commodity to be transported as a Covered Movement is assumed by the Government pursuant to 10 C.F.R. 961.11 Subpart B, Article IV, B.1. Upon request, the Government will provide written confirmation prior to shipment that a shipment is a Covered

Movement being tendered by a properly designated Government Shipper and is subject to Price Anderson Act protection, as further described in subparagraph 6.E.

2. BILLING AND INVOICING.

A. Bills of Lading. During the pendency of a legally effective prescription by the STB or its successor implementing this Settlement Agreement, BNSF will offer on a continuing basis to the Government the transportation services further described herein. The Covered Movements to which the rates apply must be shipped by a Government Shipper on shipping papers provided prior to transportation referencing this Settlement Agreement and the order of the Surface Transportation Board approving this Settlement Agreement with the following legend:

"Transportation under this tender and bill of lading is subject to a Settlement Agreement dated _____[to be inserted] between the Government and BNSF Railway Company and an order of the Surface Transportation Board in Dockets 38302S and 38376S served _____[date to be inserted] "

The Government Shipper will provide BNSF a bill of lading prior to shipment specifying the BNSF tender it is shipping under and the transportation services requested. Shipping papers will include: (a) Government-issued bills of lading which may be submitted electronically using BNSF-provided Electronic Data Interchange ("EDI") software at no cost to the Government Shipper (such electronic bills of lading may be in addition, and are not intended to replace, a bill of lading required in accordance with Federal traffic management policies and procedures); and (b) commercial bills of lading endorsed with the further

following legend: "Transportation under this tender is for the Government and the transportation charges paid to the carrier(s) by the consignor or consignee are to be paid or reimbursed by the Government according to Contract No. _____ [Insert Number]. This may be confirmed by contacting the agency at [Insert telephone number or email address]," provided however that BNSF may elect, with no less than 30 days notice, during the Term of this Settlement Agreement to require that all Covered Movements be submitted on a Government-issued bill of lading as described in subsection (a) above.

B. Invoices. Regardless of the type of bill of lading used (as described in subparagraphs 2.A. above), the Government Shipper authorizes individual carrier invoicing for movements over through routes involving railroads other than BNSF. BNSF will issue a separate invoice for only its portion of the Covered Movement and collect payment for only its portion of the Covered Movement. BNSF, at its option, consistent with Federal agency payment procedures, may tender either paper invoices or electronic invoices for all payments under this Agreement. Electronic invoices, if used, shall be delivered via EDI using a mutually agreeable clearinghouse.

C. Government Representations. Except as provided in subparagraphs 3.A. and 6.E., the Government agrees and represents that if a Government Shipper ships Covered Movements via BNSF or accepts Covered Movements routed via BNSF, it will do so subject to the terms of this Settlement Agreement. The Government further agrees and represents that the Government has the authority to enter into this Settlement Agreement and to agree to the rates and terms provided under this Settlement Agreement for the type of bill of lading listed in subparagraph 2.A. above.

The Government further represents that it has the authority to petition the STB to prescribe the rate levels and other terms provided in this Settlement Agreement. When the Government gives a Government Shipper responsibility for Covered Movements, it will require the Government Shipper to agree to be bound by the terms of this Settlement Agreement. BNSF retains all rights to obtain from the Government Shipper prompt and full payment for BNSF's services. If the Government Shipper is a federal entity, then BNSF will be paid in accordance with the Prompt Payment Act, 31 U.S.C. 3901 *et seq.*, and the payment of transportation statute, 31 U.S.C. 3726, or their successors. If the Government Shipper is a contractor designated by and/or shipping on behalf of the Government, then BNSF has the same rights for full and prompt payment as it has against any commercial shipper. BNSF may at its option require payment in advance from the Government Shipper when the Government Shipper is a contractor designated by and/or shipping on behalf of the Government, unless that contractor acting as the Government Shipper has posted a payment bond adequate to ensure that BNSF will be paid for all services it provides.

3. SCOPE OF SETTLEMENT AGREEMENT.

A. Other Agreements and Tenders. The Government and BNSF may agree to transportation of otherwise Covered Movements on terms and conditions different from those in this Settlement Agreement. Nothing in this Settlement Agreement supersedes the terms and conditions of previously issued tenders applicable to otherwise Covered Movements.

B. Conflicts with Tender Form. In the event of a conflict between the terms of this Settlement Agreement and the terms and conditions contained in the Government tender form issued subsequent to the Effective Date of this Settlement Agreement, the terms of the Settlement Agreement shall govern in the absence of an agreement to the contrary.

C. Applicability. BNSF's obligations under this Settlement Agreement are limited to transportation of Covered Movements over BNSF's rail lines (excluding rail lines operated and owned or leased by another carrier) as of the Effective Date of this Settlement Agreement, except as provided for in subparagraph 6.A.(1).

4. SERVICE.

A. General. During the pendency of a legally effective prescription by the STB or its predecessor implementing this Settlement Agreement, BNSF undertakes to provide transportation of Covered Movements, including all services normally provided without extra charge by common carriers by rail under 49 USC 11101(a), between all points on BNSF's rail lines as described in 3.C. above as of the date of this Settlement Agreement.

B. Routing and Diversion. When BNSF serves as originating or terminating carrier, pickup or delivery of a shipment shall occur at the Government Shipper's request on any day of the week on reasonable notice without payment of any surcharge for such pickup or delivery if such request can be accommodated using BNSF's regularly scheduled operations. If BNSF must provide additional service to accommodate such request, the Government Shipper agrees to pay the applicable charges set forth in BNSF Tariff 6100, subject to the limitation set forth in Section

6.B.(2) below, in effect on the date such service is provided. BNSF will control selection of routes internal to its system consistent with subparagraph 4.F. below, but BNSF agrees to consult with the Government when unusual circumstances, such as public demonstrations or other governmental concerns, would make an alternative route preferable.

C. Car Placement and Handling. In making up a train, the escort car, buffer car(s) and loaded cask car(s) should be placed as a group in the train. This group must be placed in the clear of adjacent tracks and rail switch points while in a yard or siding. Escort cars will be used when required by regulation or, in the absence of such regulation, at the discretion of the Government. An escort car moving alone, or a group of cars that includes an escort car, must not be humped or cut off in motion with the engine detached. Government Shipper agrees that any riders in escort cars or buffer cars will comply with BNSF's safety rules and operating practices.

D. Equipment Utilization. All cars supplied by the Government Shipper for Covered Movements shall be used in the exclusive service of the Government Shipper, and BNSF shall route all such cars and empty casks to the location designated by the Government Shipper. Recognizing that the Government Shipper needs to maintain efficient use of such cars and empty casks, BNSF will use commercially reasonable efforts in accordance with ordinary rail industry practice to prevent such cars and empty casks from being subject to unusual delays. When regular train service is supplied, BNSF will use commercially reasonable efforts in accordance with ordinary rail industry practice to use the next appropriate train and to provide transit times equivalent to the

regular train transit times and day of week schedules BNSF provides for shipments of similar size and weight.

E. Limitations. BNSF shall not be responsible under this Settlement Agreement for any non-rail transportation, storage, loading or unloading. BNSF is not required by this Settlement Agreement to develop any new facilities, such as new rail lines, sidings, or transloading facilities, except as provided in subparagraph 6.D. below.

F. Practices. The rates agreed to herein include BNSF's handling and routing of Covered Movements, except for those commodities in subparagraph 1.A.(3) and except as agreed by the parties for commodities in subparagraph 1.A.(2), using the procedures and practices as outlined in AAR Circular OT-55-E or its replacements for other hazardous materials, which currently provide for:

- (1) 50 MPH speed restriction
- (2) Use of siding or auxiliary track as specified for a "Key Train"
- (3) Emergency brake application response as specified for a "Key Train"
- (4) Journal wayside detector report response as specified for a "Key Train"
- (5) Wayside defective bearing detectors as specified for "Key Routes"
- (6) Main track inspection by inspection cars as specified for "Key Routes"
- (7) Meeting or passing track as specified for "Key Trains"
- (8) Exercising maximum reasonable efforts to achieve coupling of Covered Movements at speeds not to exceed 4 MPH

(9) Covered Movements cut off in motion must be handled in not more than 2-car cuts except for movements involving an escort car, which shall be handled as described in subparagraph 4.C. above. Cars cut off in motion to be directly coupled to a Covered Movement car must be handled in not more than 2-car cuts.

G. Recovery and Cleanup Procedures. BNSF will maintain written procedures for recovery and cleanup in the event of an accident or incident. BNSF will provide a copy or description of its procedures to the Government within one month of the Effective Date of this Settlement Agreement. BNSF will be entitled to rely heavily on Government technical assistance and participation in recovery and cleanup of any accident or incident. Although the Government is not obligated to commit Government employees to perform recovery and cleanup, the Government will arrange for experienced personnel to guide BNSF and its contractors.

H. Notice and Surveillance. BNSF will notify the Government Shipper noted in the shipping papers of any problems or accidents or any intention to delay a shipment for weather or other reasons affecting normal operations. BNSF will promptly notify the Government Shipper of the exact location at which the carrier intends to hold any shipment beyond normal operational delays. Government Shipper escorts accompanying shipments will maintain 24-hour surveillance of any parked shipment.

I. Regulations and Safety. BNSF will comply with all applicable regulations and requirements of the DOT, FRA, and any other governmental entity having authority to promulgate such regulations and requirements. These regulations include, but are not limited to, FRA rail safety regulations regarding track, equipment, and operating

personnel (train crews). The Government will ensure that shipments handled under this Settlement Agreement are tendered in compliance with all applicable DOT, FRA, and NRC regulations. The parties agree that the Covered Movements must be transported safely. If either party becomes aware of substantial evidence not heretofore disclosed to the other party indicating that any aspect of the transportation of Covered Movements (including, but not limited to, equipment and operating practices) creates a material risk of an accident or mechanical failure, it must notify the other party immediately. The parties will meet promptly to determine how to respond to the evidence. If the parties cannot agree on a response, the parties will resolve their disagreement using the procedure set forth in paragraph 15 of this Settlement Agreement. During the pendency of the disagreement, BNSF or the Government may take actions to mitigate the potential risk. The costs of taking those actions will be allocated in accordance with the resolution of the dispute.

5. RATE PROCESS.

A. Establishment. Upon request, BNSF shall provide rates for the Covered Movements in the form of tenders or rate quotations under 49 USC 10721 or its successor from origins (which shall be established and normally used interchange points for hazardous materials) to destinations (which shall be established and normally used interchange points for hazardous materials) specified by the Government Shipper using the methodology of Attachment No. 1 hereto in the tender format specified by the Government.

B. Future Tenders. BNSF recognizes that shipments may vary in terms of origin, destination, interchange point, loaded or empty cask weight, and tare weight. BNSF will provide a tender or rate quotation based on the information supplied within 30 days of receiving a written request from the Government Shipper containing the origin and destination of a movement on BNSF and applicable weights.

C. Shipment Forecast. Prior to the start of each calendar year, the Government will provide BNSF with a forecast of volumes to be shipped pursuant to this Agreement in the subsequent year, specifying commodity, origins and destination. During the year, the Government will provide BNSF with updates to the forecast, through the Prospective Shipment Module or other means.

6. RATES AND INDEMNIFICATION.

A. Basic Services. All tenders or rate quotations shall be based on the most current BNSF system average variable unit costs computed under URCS and the methodology set forth in Attachment No. 1 (hereinafter "Shipment Costs"). Rates for naval shipments moving on BNSF with an ultimate origin or destination of Scoville, Idaho, will be at a rate not exceeding 2.5 times Shipment Costs. Rates for all other Covered Movements shall not exceed 3.51 times Shipment Costs, except that rates for unoccupied escort cars and buffer cars not moving with casks shall not exceed 1.8 times Shipment Costs. (Naval spent fuel may be shipped from Scoville to any destination at a rate not to exceed 2.5 times Shipment Costs, but reshipment beyond that destination will be subject to a rate not to exceed 3.51 times Shipment Costs). The multipliers (2.5, 3.51 and 1.8) identified above are the "Applicable Markups" for each type of Covered Movement. Costs will be based on actual point-to-point mileage that

the Covered Movement travels on BNSF rail lines and shall not include mileage on lines owned or leased by connecting Class I, Class II or Class III railroads, except as provided for in subparagraph 6.A.1 below. BNSF intends to charge, and the Government Shipper will pay charges at, the maximum rate levels specified above, but BNSF may at any time serve notice of reduced rates to meet competition or for any other reason.

(1) Switching Charges. The Government Shipper shall be accorded full benefit of any applicable reciprocal and interline switching agreements in force between BNSF and other carriers. If a connecting switch carrier independently requires BNSF to pay amounts for their handling of Covered Movements greater than the per mile Shipment Costs identified herein, such amount, without further markup, will be included in the total BNSF-provided rate and the Government Shipper will be obligated to compensate BNSF for such additional amounts, without further markup. BNSF will use its best efforts to notify the Government of any attempt by a reciprocal or interline switching carrier to require BNSF to pay such additional amounts, fees, or costs.

(2) URCS Substitute. The Settlement Agreement shall be subject to any updates, revisions or adjustments to the URCS costing methodology implemented by the STB during the Term of this Settlement Agreement. In the event that the STB or its successors cease to update the URCS costing methodology, the parties will determine the most appropriate substitute costing methodology that most closely matches the economic

structure of URCS methodology or, if unable to agree on a methodology, will renegotiate this Settlement Agreement pursuant to paragraph 25 to the extent necessary to resolve this matter. If a substitute costing methodology is utilized, the ratios to Shipment Costs set forth above and all other ratios to costs in this Settlement Agreement shall be recomputed using the substitute costing methodology for purposes of the subsequent adjustment to rates and other payments. The same procedures set forth in this paragraph will apply if any substitute costing methodology adopted for use hereunder becomes unavailable.

B. Extra Services.

(1) Scope of Extra Services. The rates provided pursuant to subparagraph 6.A. of this Settlement Agreement cover only common carrier transportation services on BNSF rail lines that would be provided without extra charge for other shipments involving hazardous materials, taking into account the weights of Covered Movements and consistent with BNSF's obligations as a common carrier; provided, however, that BNSF agrees to treat all of the services identified in subparagraphs 4.C., 4.D., 4.F., 4.H., 4.I. and 10.B. as encompassed within BNSF's rate for Basic Services. If the Government Shipper asks BNSF to perform any other activity or service, other than Emergency Responses, in connection with Covered Movements that BNSF would not otherwise perform without extra charge in providing common carrier service for hazardous materials, such activities or services shall be considered "Extra Services." Such

Extra Services shall be provided by BNSF as additional common carrier services or in all other respects ancillary services to BNSF's common carrier services. BNSF will offer such Extra Services, as may be required from time to time, in tenders or rate quotations published under 49 USC 10721 or its successor. BNSF will not unreasonably withhold Extra Services requested by the Government Shipper; provided, however, that BNSF will not be obligated to provide Extra Services that would disrupt normal operations, require it to provide beyond its own line of railroad either service or equipment (except as required for normal interchange), or require BNSF to perform non-transportation services, except for upgrading or rehabilitation of track or rail facilities as provided in subparagraph 6.D.

(2) Rates for Extra Services. BNSF shall be paid for Extra Services as set forth in BNSF Tariff 6100 in effect on the date such Extra Services are provided to the extent charges for such Extra Services are contained therein. The parties understand that the charges set forth in Tariff 6100 are of general application and are not established specifically for shipments under this Settlement Agreement. If Tariff 6100 does not contain charges for such Extra Services that are specific to the costs of the request of the Government Shipper, BNSF will be paid as follows:

- (a) The Government Shipper and BNSF will negotiate the estimated variable cost of performing the Extra Service ("Extra Expense"). BNSF will then establish a rate for the Extra Service as the product of the Extra Expense multiplied by the Applicable

Markup as provided in subparagraph 6.A. ("Extra Service Rate"), except as otherwise provided in subparagraphs 6.B.(3). through 6.B.(5).

(b) To facilitate the process for determining Extra Expense, the following will apply, unless otherwise specifically agreed by the Government and BNSF.

(i) Extra Expense for labor, other than for train operations, associated with providing Extra Services will be calculated by application of the methodology in Attachment 3.

(ii) Extra Expense for purchased services associated with providing Extra Services will be based on the expected invoiced cost of purchased service and the estimated expected overhead costs associated with arranging and paying for the purchased service.

(iii) Extra Expense for materials associated with providing Extra Services will be the estimated delivered cost, including taxes and shipping and handling, whether provided by BNSF or a third party, and the estimated expected overhead costs associated with providing the materials.

(c) Upon completion of any Extra Service, BNSF shall provide to the Government Shipper information detailing actual costs incurred in the performance of the Extra Service. The requirement to

provide cost-performance information will not be used by the Government Shipper as a basis for an adjustment to the Extra Service Rate for any Extra Services already performed.

(d) In the event that the Government Shipper and BNSF cannot agree on the amount of compensation for Extra Services, the matter may be resolved under paragraph 15, Dispute Resolution.

(3) Fees and Permits. The Government or Government Shipper will pay all governmental permits, fees, or charges applicable to BNSF's transportation of Covered Movements and, to the extent they constitute Extra Services, for any associated Extra Services. The Extra Service Rate shall be the product of BNSF's Extra Expense and a Markup of 1.8.

(4) Advance Requirements by Other Parties. The Government or Government Shipper will pay BNSF for Extra Services requested in advance of a shipment by other governmental authorities, including local, state, federal, and tribal authorities, and by persons acting for them, including Government or Government Shippers, to the extent they impose additional costs on Covered Movements and 50 percent or more of the shipments incurring the additional costs on the BNSF are Covered Movements. BNSF will use commercially reasonable efforts to notify the Government of each such requirement to give the Government an opportunity to discuss the Extra Services with the other governmental authority or party to verify the need for the Extra Services. The Extra

Service Rate shall be the product of BNSF's Extra Expense and a Markup of 1.8.

(5) Meetings. If the Government Shipper invites BNSF to meetings, exercises, hearings, or other gatherings in connection with Covered Movements, BNSF will notify the Government Shipper if it considers the requested participation to be Extra Services or voluntary participation by virtue of its interest in attending. If BNSF considers its participation Extra Services, the Government Shipper will then determine whether it wishes BNSF to participate. If the Government Shipper requests BNSF's participation, the Extra Service Rate will be the product of the Extra Expense and a Markup of 1.8. In the event BNSF chooses to participate by having certain of its employees attend and the Government Shipper desires additional BNSF personnel to attend, the Government will compensate BNSF for the attendance of the additional personnel as Extra Services.

C. Emergency Responses. The Government or Government Shipper will equitably compensate BNSF for responding to emergencies arising out of transportation of Covered Movements, including the security emergency responses described in subparagraph 10.C., but excluding recovery and cleanup costs actually indemnified pursuant to subparagraph 6.E. The compensation will be determined considering BNSF's reasonable costs, including applicable overheads, and the Applicable Markup as provided in paragraph 6.A. In the event that the Government or Government Shipper and BNSF cannot agree to equitable compensation, the matter will be resolved under

paragraph 15.

D. Track and Facility Limitations. If BNSF believes that a proposed Covered Movement cannot be handled safely over the track or rail facilities on the proposed route or without damaging the track or facilities or requiring BNSF to upgrade or rehabilitate such track or facilities, BNSF will confer with the Government Shipper to identify alternatives for handling the movement. Alternatives may include, without limitation, other routes, other loading locations, special practices, speed restrictions, changing the number or type of cars in the movement, and upgrading the track or facilities. If BNSF believes it will incur additional operating costs in carrying out an alternative, it will identify such costs to the Government Shipper. If the Government Shipper chooses that alternative, such additional costs will be treated as Extra Services and BNSF will be compensated as provided in subparagraph 6.B.(2). If BNSF believes an alternative requires BNSF to upgrade or rehabilitate its track or rail facilities beyond the level necessary for its then-current use in order to handle the Covered Movement, it will identify such costs to the Government. If the Government selects that alternative, the Government will reimburse BNSF for the agreed upgrading and rehabilitation costs, including overhead, without any markup. In the event the parties are unable to agree on the reimbursement, the matter will be settled under paragraph 15.

E. Indemnification. Transportation of Covered Movements as defined in subparagraphs 1.A.(1) through (3) of this Settlement Agreement is contingent upon the availability of protection under the Price Anderson Act or its successor for public liability arising from the nuclear hazards associated with the Covered Movements. The applicability of this Act will be documented in each bill of lading for a Covered Movement

as defined in subparagraphs 1.A.(1) through (3) above. For the purposes of Price Anderson coverage, each bill of lading and not this Settlement Agreement shall constitute an indemnification agreement with BNSF and each such bill of lading shall be deemed to include such indemnification documentation. No markup will be paid on costs reimbursed under Price Anderson or its successor. With respect to costs that are not indemnified by Price Anderson, the Government will further pay the costs, without markup, of cleanup, evacuation and recovery actions requested by a government entity beyond those contained in the written procedure (see subparagraph 4.G.), including actions required by state, local or tribal authorities. In the event of a lapse in the Price Anderson Act or its successor, BNSF is not obligated to transport such Covered Movements pursuant to the terms and conditions of this Settlement Agreement unless and until the Price Anderson Act is restored or a successor is enacted. If the Price Anderson Act or any successor thereto lapses, BNSF shall continue to move the commodities covered by this Settlement Agreement but only to the extent required by its common carrier obligation, in which case BNSF will determine the terms, including the rate, for such service, in a manner consistent with its common carrier obligation but irrespective of the terms of this Settlement Agreement. Nothing in this Settlement Agreement shall prevent BNSF from contesting before the STB or any successor agency whether there is any common carrier obligation to transport the commodities covered by this Settlement Agreement.

7. UPDATES.

BNSF shall update attachments No. 1, No. 2, and No. 3 at least annually. The updated attachments shall be effective January 1 and be released after the STB

releases a new URCS and make-whole factors for the calendar year two years prior to the January 1 adjustment date. If any other data needed for the update are not available to make the calculation, the update shall be made within 30 days after the information becomes available. The updated attachments shall be used to generate tenders and rate quotations, as requested by the Government, and the updated rates shall be effective January 1, retroactively if necessary.

8. GOVERNMENT-SUPPLIED CARS.

A. Requirements. Future shipments of the Covered Movements shall be on cars supplied by the Government Shipper. The Government Shipper will supply all escort cars and will endeavor to supply all buffer cars required for safe movement. Gross weight on rail of a loaded cask car shall not exceed 789,000 pounds, or, as currently limited by AAR Interchange Rules, 65,750 pounds per axle load for a double three axle truck arrangement and 6 ½ by 12 journal bearings provided that track conditions allow for such weight. This specified axle loading limit and corresponding truck arrangement and journal size are subject to change pursuant to changes in the AAR Interchange Rules. All cars supplied by the Government Shipper shall be designed and maintained suitable for interchange service and will comply with AAR Construction Standards at the time built and AAR Interchange Rules in effect at the time of the movement.

B. New Cars. This Settlement Agreement encompasses transportation in freight cars that are not now in service, some of which have not yet been designed or built. Safe transportation of those cars may require operating, train placement, route, or other restrictions and may not be possible in regular train service. The parties will

cooperate to define safe and practical designs for those cars and safe operating practices for transportation of the cars. The car design must be in accordance with then effective AAR Interchange Rules and AAR mechanical specifications published in M-1001 or their successors.

9. MILEAGE ALLOWANCES.

The rates provided under this Settlement Agreement assume that no mileage allowance or car hire will be paid by BNSF for any car. If BNSF must pay a mileage allowance or car hire for a car provided by the Government Shipper or at the Government Shipper's request, the payments will be reimbursed by the Government or Government Shipper including a 1.8 markup.

10. SECURITY.

A. Coordination. The Government Shipper will maintain ongoing liaison with BNSF's police department. BNSF police will provide a 24-hour security emergency contact number. BNSF acknowledges that shipments of spent fuel require security precautions and therefore require Government Shipper escorts and may require extra security efforts by BNSF. The Government Shipper will advise BNSF's police department via electronic communication of a shipment's particulars, including the level of the protection required for such shipment and the Government Shipper escorts accompanying the shipment, approximately one week prior to every shipment. BNSF's police department should share shipment information only with those other railroad personnel and with local and state law enforcement personnel with a "need-to-know" under NRC and railroad security procedures. Under NRC rules (10 CFR 73.21),

information protection procedures employed by state and local police forces are deemed to meet NRC requirements for the protection of safeguards information.

B. Communication and Surveillance. BNSF will provide railroad radio frequencies for programming on radios supplied by the Government Shipper and carried by shipment escorts. The escorts will communicate with train crews only out of operational necessity or in the event of an emergency. Escorts accompanying shipments will maintain 24-hour surveillance of shipments. As provided in subparagraph 4.C., BNSF will handle and switch the escort vehicle with the container cars so that the escorts can maintain this surveillance.

C. Security Emergency Response. In the event of a security-threatening situation, Government Shipper escorts will request through the train crew, local railroad officials, or the 24-hour security number, that BNSF initiate a security emergency response to the situation. BNSF's security emergency response will use commercially reasonable efforts on BNSF property to:

- (1) Ensure that the spent fuel railcars are not moved without proper authority;
- (2) Minimize any malicious activity;
- (3) Prevent any attempted theft or diversion;
- (4) Maintain the well-being of the Government Shipper escorts; and
- (5) Resume shipment movement as quickly as safe movement is possible.

11. ESCORT CARS.

Rates for escort cars or cabooses provided by the Government Shipper will be calculated in accordance with the methodology described in Attachment No. 1. The rate includes all escort vehicle movement charges and passenger fare(s) for any accompanying escort(s) or attendant(s).

12. BUFFER CARS.

Rates for buffer cars supplied by the Government Shipper will be calculated in accordance with the methodology described in Attachment No. 1. BNSF may elect to add as additional buffer cars to the Covered Movement group empty cars or cars carrying dry freight meeting DOT requirements, provided such cars do not impede observation of loaded cask cars by the escorts. BNSF's insertion of additional buffer cars shall be at its own expense. Rates for buffer cars requested by the Government Shipper, for whatever reason, including the unavailability of Government Shipper buffer cars or the implementation of alternatives selected by the Government under subparagraph 6.D., will be calculated in accordance with the methodology described in Attachment No. 1.

13. TRAIN SERVICE.

A. Charge for Dedicated Train Service. The Covered Movements will move at regular train service rates except when the Government Shipper expressly requests, or if government regulations require, the use of special or dedicated trains. The dedicated train rate shall include the regular train rate plus a surcharge as shown in Attachment No. 1. The surcharge is the difference between 2010 URCS costs per train-mile for a dedicated train and the costs per train-mile for a shipment of six loaded cask cars (plus buffer and escort cars) in a regular train based on BNSF's 2010 system

average train characteristics. The cost per dedicated train mile is to be revised up or down annually by multiplying it by a ratio of the latest URCS costs divided by the 2010 URCS costs as shown in Attachment No. 2.

B. Determination of Regular and Dedicated Train Service. When the Government Shipper has not requested special or dedicated trains, BNSF reserves the right to move the Covered Movements i) in dedicated trains at regular train rates, ii) in regular trains at the rear end of trains; or iii) in regular trains if the parties develop mutually acceptable arrangements to separate casks from escort cars. For the purposes of this Settlement Agreement, the following are specific examples of operational conditions that would not by themselves result in dedicated train charges to the Government:

- (1) Operation of the current fleet of DODX escort cabooses (DODX 900-905) prior to provision of cars that satisfy subparagraph C. below for movement in a group with the cask cars at any location in the train consist;
- (2) Operation of freight cars with otherwise AAR-approved trucks that do not allow for wayside defective bearing detection; or
- (3) AAR adoption of a performance standard requiring movement of spent nuclear fuel in dedicated trains as envisioned by AAR draft circular C-9149 dated May 23, 2000.

C. Notice of Regular Train Service. Unless the parties have agreed on procedures to separate loaded cask cars from escort cars within a train, BNSF may notify the Government five years in advance that it intends to move Covered Movements at the head end of regular trains on a regular basis. The Government

Shipper will provide rail cars (including escort cars) that are structurally suitable for operation at the head end of regular trains. BNSF will then use regular train service on a regular basis. If the Government Shipper fails to provide suitable cars within five years of the notice, BNSF may provide and charge for dedicated train service in accordance with subparagraph 13.A.

D. Dedicated Train Service. Where the Government Shipper requests or is charged for special or dedicated trains, such trains shall be used in the exclusive service of the Government Shipper. A dedicated train shall move on BNSF within a transit time agreed to between BNSF and the Government Shipper.

14. REPARATION CLAIMS AND RATE CHALLENGES EXTINGUISHED.

In consideration of the settlement of the issues herein, BNSF will not pay reparations for any shipment subject to the complaints in the cases settled by this Settlement Agreement. The rates established pursuant to this Settlement Agreement will not be subject to challenge as unreasonable or otherwise unlawful under Title 49 of the United States Code or on any other basis, whether or not such basis for a challenge is in effect on the date of this Settlement Agreement or becomes available later. In a proceeding against other railroads to establish the unreasonableness of a through rate involving BNSF, the Government may challenge the entire rate. The Government shall not question the BNSF local or proportional rate as a factor in a through rate. The parties agree that BNSF will not be required to appear in rate proceedings initiated by DOE/DOD against other carriers involving Covered Movements. Nothing in this Settlement Agreement in any way prejudices the Government's right of action against any connecting carrier.

15. DISPUTE RESOLUTION.

A. Alternative Dispute Resolution. The parties recognize that methods for fair and efficient dispute resolution are essential to the successful implementation of this Settlement Agreement. To facilitate the prevention and early resolution of disputes, the parties agree to the following ADR provisions.

(1) Negotiation. The parties shall use their best efforts to informally resolve any dispute, claim, question, or disagreement (herein "Claim") by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to all parties.

(2) Referral to Neutral. If an agreement cannot be reached through informal negotiations, then such Claim shall be referred to a "neutral" with relevant expertise chosen by the parties. The parties will use their best efforts to select a qualified "neutral" acceptable to both parties. If they are unable to agree, they will ask the STB to designate a qualified "neutral." The "neutral" will consider the Claim under such procedures as he or she may establish. The neutral will serve on the parties a non-binding advisory opinion, but it will not be admissible in evidence in any subsequent proceeding. The costs of the neutral will be equally divided between BNSF and the Government.

B. Petition with STB. If disputes arise that cannot be resolved through the ADR process, either party may (1) file a petition with the STB or its successor or (2) pursue whatever other remedies are available at law for disputes outside the

exclusive or primary jurisdiction of the STB or any successor, within 60 days of service of the neutral's opinion from the ADR process. The parties agree that they will ask the STB, its successor agency, or any other forum to resolve any petition arising under this Settlement Agreement in a manner that carries out the intent and terms of this Settlement Agreement. The STB, its successor agency, or any other forum should construe the parties' obligations in a manner consistent with BNSF's common carrier obligations under applicable federal law except as expressly modified herein.

16. GENERAL SERVICES ADMINISTRATION.

Nothing in this Settlement Agreement shall be deemed to alter or supersede the authority reserved for the General Services Administration.

17. FORCE MAJEURE.

In the event any party is unable to meet its obligations under this Settlement Agreement as a result of acts of God, war, insurrection, strikes, accidents, significant risk of disruption or terrorist acts, or other like causes beyond its control, the obligations of the party affected by the force majeure condition shall be suspended for the duration of the condition; provided, however, that the affected party shall make all reasonable efforts to continue to meet its obligations for the duration of the force majeure condition; and provided, further, that the party declaring the force majeure shall promptly notify the other parties by wire, fax or e-mail of when the force majeure began, the nature of the force majeure condition, and when it has been terminated. The suspension of any obligations owing to force majeure shall not affect any rights accrued under this Settlement Agreement prior to the force majeure condition.

18. RELEASED RATES.

The lading and casks that move under this Settlement Agreement and the associated rate quotations or tenders are subject to a released valuation of 40 cents per pound.

19. SUCCESSORS AND ASSIGNS.

This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, agents, and contractors.

20. COOPERATION.

The parties agree to cooperate to present this Settlement Agreement to the STB for its approval within 10 days of the signing of the Settlement Agreement and to seek approval and adoption of the Settlement Agreement and dismissal of BNSF from the complaints with prejudice.

21. EFFECTIVE DATE.

The Settlement Agreement shall become effective upon the effective date of the approval of the agreement by the STB.

22. NOTICE.

All notices required by this Settlement Agreement to be served by any party shall be sent to the following:

To BNSF: BNSF Railway Company
 2500 Lou Menk Drive
 Fort Worth, TX 76131-2828
 Attention: Vice President Industrial Products Marketing
 Fax No.: (817) 867-6724

To DOE: United States Department of Energy
 Office of the General Counsel
 1000 Independence Avenue, SW
 Washington, DC 20585
 Attention: Assistant General Counsel for Litigation
 Fax No.: (202) 586-3274

To DOD: Commander
 CODE NAVSEA 08U/ATTN:
 Director of Regulatory Affairs
 Naval Sea Systems Command
 1240 Isaac Hull Avenue, SE Stop 8036
 Washington Navy Yard, DC 20376-8036
 Fax No.: (202) 781-6427

23. RELEASE.

A. STB Order. The intent of this Settlement Agreement is to extinguish all claims against BNSF and its predecessors under the complaints in these proceedings and to establish legally applicable rates for future Covered Movements that are not subject to challenge. This Settlement Agreement is contingent on adoption of the Settlement Agreement by the STB and issuance of an STB order extinguishing all liability of BNSF and its present and former subsidiaries for freight charges for Covered Movements and prescribing the rate methodology of Attachment Nos. 1, 2, and 3 hereto.

B. Release. Upon becoming effective, this Settlement Agreement shall release BNSF and all of its predecessors, together with its subsidiaries, from any liability to the Government for all claims arising in these proceedings. The release of BNSF shall not operate to release any other party to these proceedings from liability, and the Government hereby fully preserves and intends to enforce its claims against all other carriers involved in these proceedings; provided, however, that the Government agrees that it will not seek to recover from any other defendant in these proceedings any portion of freight charges collected for transportation on BNSF or predecessor railroads released from liability for transportation over the released railroads; and provided, further, that in the event the Government recovers reparations from other rail carriers for freight charges collected for transportation on BNSF or predecessor railroads released from liability and those carriers in turn recover any or all of those reparations from BNSF, the Government will reimburse BNSF. Except as required by FRA and STB

regulations, BNSF is not required to maintain documents pertaining to its transportation of Covered Movements prior to the effective date of this Settlement Agreement.

24. WAIVER.

The failure of any party to enforce any provision of this Settlement Agreement or to prosecute any default shall not be construed as a waiver of the provision nor bar prosecution of that default unless so indicated in writing.

25. TERM AND RENEGOTIATION.

The term of this Settlement Agreement shall be for 25 years from the Effective Date of this Settlement Agreement. Thereafter, the Settlement Agreement shall continue in effect for additional 5 year periods until one party has given the other party one year written notice of its desire to terminate the Settlement Agreement at the end of the current period.

Notwithstanding the preceding paragraph, the Government or BNSF may demand and obtain renegotiation of the Settlement Agreement if circumstances affecting this Settlement Agreement change in ways that render continued performance of the Settlement Agreement grossly inequitable to either party; provided however that neither party will be obligated to extend the Settlement Agreement beyond the initial 25 year term. If after execution of the Settlement Agreement, the Price Anderson Act is modified or a successor is enacted such that protection for BNSF is substantially reduced, or BNSF's cost of obtaining such indemnification is substantially increased, BNSF may at its option require renegotiation of the Settlement Agreement. If the STB or its successor ceases to update URCS and the parties cannot find an appropriate substitute for URCS, the Settlement Agreement will be renegotiated to adopt a

replacement for URCS. The parties agree to renegotiate in good faith. If the parties are unable to reach agreement, they agree to resolve their disagreements by applying the procedures set forth in paragraph 15 above.

26. AVAILABILITY OF APPROPRIATED FUNDS LIMITATION.

Except for public liabilities indemnified under the Price Anderson Act or its successors, the Government's liability under subparagraphs 4.G., 6.B., 6.C., 6.D., and 6.E. of this Settlement Agreement is subject to the availability of appropriated funds at the time a contingency occurs; provided, however, that BNSF is not required to provide any service or facility for which the Government would otherwise be responsible under this Settlement Agreement but for which it is unable or unwilling to pay; and provided, further, that if transportation of a Covered Movement cannot occur legally or safely without such service or facility, BNSF shall not be required to provide such transportation until arrangements have been made for payment. Nothing in the Settlement Agreement shall be construed as implying the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

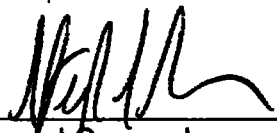
27. CAPTIONS.

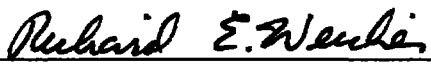
All paragraph headings herein are inserted for convenience only and shall not affect any construction or interpretation of this Settlement Agreement.

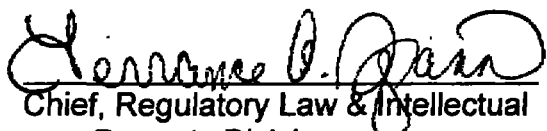
28. INTEGRATION.

Except as provided in subparagraph 3.A., all prior understandings and agreements between the parties hereto are merged in this Settlement Agreement, which alone fully and completely expresses the parties' intent and understanding.

Executed this 30th day of August, 2012.


General Counsel
U.S. Department of Energy
*Assistant General Counsel for
Litigation*


BNSF Railway Company
Vice Pres + General Counsel - Regulatory


Chief, Regulatory Law & Intellectual
Property Division
U.S. Army Legal Services Agency
Counsel for
U.S. Department of Defense

Methodology for Determining Shipment Costs for Basic Services - BNSF

Line	Description	Source/Calculation	Value 2010
<u>Determination of Parameters of Specific Covered Movement</u>			
101a	Gross Weight on Rail - Car # 1	Covered Movement-specific parameter	175.00
101b	Gross Weight on Rail - Car # 2	Covered Movement-specific parameter	30.00
101c	Gross Weight on Rail - Car # 3	Covered Movement-specific parameter	30.00
101d	Gross Weight on Rail - Car # 4	Covered Movement-specific parameter	28.00
	etc		
101	Shipment Total Gross Weight on Rail	Sum Ls. 101a - 101_	263.00
102	Cars handled	Covered Movement-specific parameter	4
103	Number of Originations/Terminations	Covered Movement-specific parameter	-
104	Number of Interchanges	Covered Movement-specific parameter	2
105a	Shipment miles	Covered Movement-specific parameter	300
105b	Dedicated train miles	Covered Movement-specific parameter	300
<u>Latest System-Average Factors</u>			
106a	Switch minutes per car - terminal	Attachment No. 2 - Line 112	14.049
106b	Switch minutes per car - interchange	Attachment No. 2 - Line 113	4.218
106c	Switch minutes per mile - intermediate	Attachment No. 2 - Line 114	0.016
107	Trailing weight - regular train	Attachment No. 2 - Line 104	5.4607
108	Average locomotives - regular train	Attachment No. 2 - Line 105	3.142
<u>Factors for Specific Covered Movement</u>			
109	Shipment Gross Ton Miles	$L.101 \times L.105a$	78,900
110	Shipment Train Miles	$(L.101/L.107) \times L.105a$	14.449
111	Shipment Locomotive Unit Miles	$(L.101/L.107) \times L.105a \times L.108$	45,398
112	Shipment Cars Originated or Terminated	$L.102 \times L.103$	-
113	Shipment Switch Engine Minutes	$L.102 \times (L.103 \times L.106a + L.104 \times L.106b + (L.105a - L.105b) \times L.106c)$	33,743
<u>Latest Unit Cost Factors</u>			
114	Cost per Gross Ton Mile	Attachment No. 2 - Line 106	0.00474444
115	Cost per Train Mile	Attachment No. 2 - Line 107	9.58711
116	Cost per Locomotive Unit Mile	Attachment No. 2 - Line 108	6.21319
117	Cost per car handled	Attachment No. 2 - Line 109	1.98652
118	Cost per car originated or terminated	Attachment No. 2 - Line 110	14.64691
119	Cost per switch engine minute	Attachment No. 2 - Line 111	11.36165
120	Cost per Dedicated Train Mile	Attachment No. 2 - Line 118	7.30050
<u>Cost for Specific Covered Movement</u>			
121	Gross Ton Mile Cost	$L.109 \times L.114$	374.34
122	Train Mile Cost	$L.110 \times L.115$	138.52
123	Locomotive Unit Mile Cost	$L.111 \times L.116$	282.07
124	Cars Handled Cost	$L.102 \times L.117$	7.95
125	Cars Originated or Terminated Cost	$L.112 \times L.118$	-
126	Switch Engine Minute Cost	$L.113 \times L.119$	383.37
127	Dedicated Train Mile Cost	$L.105b \times L.120$	2,190.15
128	Total Shipment Cost	Sum Ls 121 through 127	3,376.39
<u>Determination of Freight Charge</u>			
129	Freight Charge - Category A	$L.128 \times 250\%$	\$8,440.99
130	Freight Charge - Category B	$L.128 \times 351\%$	\$11,851.14
131	Freight Charge - Category C	$L.128 \times 180\%$	\$6,077.51

Note. The Covered Movement-specific parameters are assumed for illustrative purposes only. The calculation of shipment cost for an actual Covered Movement will depend on the actual parameters, including number and weight of cars, distance on BNSF and short line, number of interchanges, etc. The values for system-average factors and unit costs factors reflect 2010 URCS and 2010 make-whole factors and are applicable for movements in 2012 until superseded by subsequent URCS and subsequent make-whole factors. Dedicated Train Mile Cost shall be included in the calculation of the Freight Charge only if Paragraph 13 of the Settlement Agreement provides that a charge for dedicated train service applies.

Notes and Explanations

Freight Charge - Category A applies only to U. S. Navy Covered Movements to or from Scoville, ID, except for those movements of buffer cars or escort cars described in Category C below

Freight Charge - Category B applies to all other Covered Movements except for those movements of buffer cars or escort cars described in Category C below.

Freight Charge - Category C applies to buffer and/or escort cars moving alone when immediately preceded by a Category A or Category B move.

Covered Movement-specific parameter as a source refers to operating parameters or other items specific to the shipment being rated. The values shown in lines 101a through 105b, 121 through 127, and 129 through 131 of this attachment are for illustrative purposes only.

Determination of System-Average Factors and Unit Cost Factors - BNSF

Latest Year = 2010

Line	Description	Source/Calculation	Value
<u>Latest System-Average Factors (R-1)</u>			
101a	Train miles - local (way)	R-1, Sch. 755, Line 3, Col. (b)	5,502,728
101b	Train miles - manifest (through)	R-1, Sch. 755, Line 4, Col. (b)	88,973,350
101	Train miles - regular trains	L.101a+L.101b	94,476,078
102a	Locomotive unit miles -local (way)	R-1, Sch. 755, Line 9, Col. (b)	12,021,140
102b	Locomotive unit miles -manifest (through)	R-1, Sch. 755, Line 10, Col. (b)	284,798,078
102	Locomotive unit miles - regular trains	L.102a+L.102b	296,819,218
103a	Gross ton miles - local (way)	R-1, Sch. 755, Line 100, Col. (b)	11,219,514
103b	Gross ton miles - manifest (through)	R-1, Sch. 755, Line 101, Col. (b)	504,683,919
103	Gross ton miles - regular trains	L.103a+L.103b	515,903,433
104	Trailing weight - regular train	L.103 / L.101	5,460.7
105	Average locomotives - regular train	L.102 / L.101	3.142
<u>Latest Unit Cost Factors</u>			
106a	Cost per gross ton mile - OE	E1L101C1	0.00237398
106b	Cost per gross ton mile - DL	E1L101C2	0.00071134
106c	Cost per gross ton mile - ROI	E1L101C3	0.00165912
106	Cost per gross ton mile - Total	L.106a + L.106b + L.106c	0.00474444
107a	Cost per train mile - other than crew - OE	E1L103C1	0.30788583
107b	Cost per train mile - other than crew - DL	E1L103C2	0.00305250
107c	Cost per train mile - other than crew - ROI	E1L103C3	0.00537863
107d	Cost per train mile - crew	E1L104C1	9.27079
107	Cost per train mile - Total	L.107a + L.107b + L.107c + L.107d	9.58711
108a	Cost per locomotive unit mile - OE	E1L105C1	5.04949
108b	Cost per locomotive unit mile - DL	E1L105C2	0.75989
108c	Cost per locomotive unit mile - ROI	E1L105C3	0.40381
108	Cost per locomotive unit mile - Total	L.108a + L.108b + L.108c	6.21319
109a	Cost per car handled - OE	E1L106C1	1.98652
109b	Cost per car handled - DL	E1L106C2	-
109c	Cost per car handled - ROI	E1L106C3	-
109	Cost per car handled - Total	L.109a + L.109b + L.109c	1.98652
110a	Cost per car originated or terminated	E1L109C1	8.48211
110b	Make-whole adjustment	E2L302C2 (STB factor Carload O & T)	6.16481
110	Cost per car originated or terminated	L.110a + L.110b	14.64691
111a	Cost per switch engine minute - OE	E1L111C1	5.51351
111b	Cost per switch engine minute - DL	E1L111C2	1.10653
111c	Cost per switch engine minute ROI	E1L111C3	4.74161
111	Cost per switch engine minute - Total	L.111a + L.111b + L.111c	11.36165
<u>Latest System-Average Factors (STB)</u>			
112a	Add-on per industry switch event	E2L301C2 (STB factor Ind Switch Event)	112.92421
112b	Additional minutes	L.112a / L.111	9.93907
112c	Average switch minutes - terminal	E2L118C25	4.11005
112	Revised switch minutes - terminal	L.112b + L.112c	14.04912
113a	Add-on per car interchanged	E2L303C2 (STB factor Carload Inch)	22.23854
113b	Additional minutes	L.113a / L.111	1.95733
113c	Average switch minutes - interchange	E2L118C26	2.26053
113	Revised switch minutes - interchange	L.113b + L.113c	4.21786
114a	Add-on per thousand car miles	E2L304C2+E2L305C2 (STB factor-1,000 Car Miles)	124.90853
114b	Additional minutes per mile	(L.114a / L.111) / 1000	0.01099
114c	Average switch minutes - intermediate	E2L118C29	1.02751
114d	Distance between intermediate switches	E2L118C23	200
114e	Average switch minutes per mile - intermediate	L.114c / L.114d	0.00514
114	Revised switch minutes per mile - intermediate	L.114b + L.114e	0.01613

Determination of Cost Per Dedicated Train Mile - BNSF

Latest Year = 2010

Line	Description	Source/Calculation	Value
<u>Dedicated Train Surcharge Per Mile - 2010 Base</u>			
115	Dedicated Train surcharge per mile (2005 base)	2010-based surcharge	7.3005
<u>2010 URCS Unit Costs Used to Develop Dedicated Train Surcharge Per Mile - 2010 Base</u>			
116a	Cost per train mile - other than crew - OE	E1L103C1 - 2005	0.30789
116b	Cost per train mile - other than crew - DL	E1L103C2 - 2005	0.00305
116c	Cost per train mile - other than crew - ROI	E1L103C3 - 2005	0.00538
116d	Cost per train mile - crew	E1L104C1 - 2005	9.27079
116e	Cost per locomotive unit mile - OE	E1L105C1 - 2005	5.04949
116f	Cost per locomotive unit mile - DL	E1L105C2 - 2005	0.75989
116g	Cost per locomotive unit mile - ROI	E1L105C3 - 2005	0.40381
116	Cost per mile - Total	Sum L.116a through L.116g	15.80030
<u>Latest URCS Unit Costs</u>			
117a	Cost per train mile - other than crew - OE	E1L103C1 - Current Year	0.30789
117b	Cost per train mile - other than crew - DL	E1L103C2 - Current Year	0.00305
117c	Cost per train mile - other than crew - ROI	E1L103C3 - Current Year	0.00538
117d	Cost per train mile - crew	E1L104C1 - Current Year	9.27079
117e	Cost per locomotive unit mile - OE	E1L105C1 - Current Year	5.04949
117f	Cost per locomotive unit mile - DL	E1L105C2 - Current Year	0.75989
117g	Cost per locomotive unit mile - ROI	E1L105C3 - Current Year	0.40381
117	Cost per mile - Total	Sum L.117a through L.117g	15.80030
<u>Determination of Cost Per Dedicated Train Mile - Reflecting Latest URCS Unit Costs</u>			
118	Cost per Dedicated Train Mile	L. 115 x L. 117 / L. 116	7.3005

Notes and Explanations

URCS (except for Lines 115 and 116) and STB make-whole factors as updated annually by the STB.
Values in Line 116a through 116g and resulting total will not be updated since they were used in the development of the 2005-based surcharge identified in Line 115.

R-1 values to be updated annually based on BNSF's R-1 report underlying STB's URCS.

Updated factors will be used effective the first of the year following release (e.g. 2010 URCS, 2010 R-1 and 2010 make-whole factors would have been used for rates effective January 1, 2011).

The Latest Year values shown are for illustrative purposes and will be updated annually

Methodology For Determining Labor Charges for Extra Services - BNSF

		Latest Year =	2010
1	Maintenance of Way & Structures		
1a	Fringe Benefits - Running	R-1, Sch 410, L. 112, C. (f)	\$110,707
1b	Fringe Benefits - Switching	R-1, Sch 410, L. 113, C. (f)	\$30,049
1c	Fringe Benefits - Other	R-1, Sch 410, L. 114, C. (f)	\$17,394
1d	Fringe Benefits - Total	L1a + L1b + L1c	\$158,150
1e	Salary & Wages	R-1, Sch 410, L. 151, C. (b)	\$409,949
1f	Fringe Benefit additive	L1d / L1e	38.6%
1g	Straight Time Hours	Wage Form A, 300(4)	16,685.093
1h	Overtime Hours	Wage Form A, 300(5)	3,556.886
1i	Total Hours worked	L1g + L1h	20,241.979
1j	Total Compensation (000)	Wage Form A, 300(11)	\$565,924
1k	Comp. per hour incl fringe benefits	(L1j*1000/L1i)*(1+L1f)	\$38.75
2	Maintenance of Equipment		
2a	Fringe Benefits - Locomotive	R-1, Sch 410, L. 205, C. (f)	\$69,676
2b	Fringe Benefits - Freight Car	R-1, Sch 410, L. 224, C. (f)	\$47,654
2c	Fringe Benefits - Other	R-1, Sch 410, L. 309, C. (f)	\$3,716
2d	Fringe Benefits - Total	L2a + L2b + L2c	\$121,046
2e	Salary & Wages	R-1, Sch 410, L. 324, C. (b)	\$304,805
2f	Fringe Benefit additive	L2d / L2e	39.7%
2g	Straight Time Hours	Wage Form A, 400(4)	12,209.387
2h	Overtime Hours	Wage Form A, 400(5)	1,387,528
2i	Total Hours worked	L2g + L2h	13,596,915
2j	Total Compensation (000)	Wage Form A, 400(11)	\$420,210
2k	Comp. per hour incl fringe benefits	(L2j*1000/L2i)*(1+L2f)	\$43.17
3	Transportation		
3a	Fringe Benefits - Admin Support	R-1, Sch 410, L. 522, C. (f)	\$36,037
3b	Salary & Wages - Admin Support	R-1, Sch 410, L. 527, C. (b)	\$130,338
3c	Fringe Benefit additive	L3a / L3b	27.6%
3d	Straight Time Hours	Wage Form A, 500(4)	2,466,983
3e	Overtime Hours	Wage Form A, 500(5)	117,771
3f	Total Hours worked	L3d + L3e	2,584,754
3g	Total Compensation (000)	Wage Form A, 500(11)	\$103,463
3h	Comp. per hour incl fringe benefits	(L3g*1000/L3f)*(1+L3c)	\$51.08
4	Executive & Professional		
4a	Fringe Benefits	R-1, Sch 410, L. 611, C. (f)	\$97,523
4b	Salary & Wages	R-1, Sch 410, L. 619, C. (b)	\$239,800
4c	Fringe Benefit additive	L4a / L4b	40.7%
4d	Straight Time Hours	Wage Form A, 100(4)	3,313,261
4e	Straight Time Hours	Wage Form A, 200(4)	6,707,888
4f	Overtime Hours	Wage Form A, 200(5)	294,204
4g	Total Hours worked	L4d + L4e + L4f	10,315,353
4h	Total Compensation (000)	Wage Form A, 100(11)	\$193,354
4i	Total Compensation (000)	Wage Form A, 200(11)	\$262,935
4j	Total Compensation (000)	L4h + L4i	\$456,289
4k	Comp. per hour incl fringe benefits	(L4j*1000/L4g)*(1+L4c)	\$62.24

Note: Data displayed in this Attachment is for the year 2010

R-1 and Wage Form A values utilized in Attachment 3 should be for the same year as the URCS and make-whole values contained in Attachments 1 and 2. Updating of the R-1 and Wage Form A values should be consistent with URCS updating procedures

EXHIBIT B

PROPOSED ULTIMATE FINDINGS AND ORDER

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

U.S. Department of Energy and U.S. Department of Defense)	
v.)	Docket No. 38302S
Baltimore & Ohio Railroad Company, et. al.)	
U.S. Department of Energy and U.S. Department of Defense)	
v.)	Docket No. 38376S
Aberdeen & Rockfish Railroad Company, et. al.)	

PROPOSED ULTIMATE FINDINGS AND ORDER

ULTIMATE FINDINGS

The Settlement Agreement is in the public interest and will be approved.

The Board finds that a future rate charged or collected under a §10721 rate quotation by BNSF for transportation services for the commodities covered by the Settlement Agreement that is higher than those agreed to in the Settlement Agreement will violate 49 U.S.C. §§ 10702, 10707. The Board finds that the agreed rate methodology of the Settlement Agreement will result in a reasonable maximum level of rates for the transportation services covered by the Settlement Agreement.

It is ordered:

1. Under 49 U.S.C. § 10704, the above described Settlement Agreement is approved.
2. The Board prescribes the rate methodology set forth in the Settlement Agreement.
3. BNSF is dismissed as a party to these proceedings, and BNSF will not be required to participate as a party in these or any related proceedings involving claims against

connecting carriers, except in response to a properly issued subpoena under the Board's rules.

4. BNSF's liability for reparations on shipments addressed in these proceedings, including BNSF's liability to connecting carriers for contribution is extinguished.
5. This decision is effective on _____.
6. Notice will be published in the Federal Register simultaneously with the issuance of this decision.

By the Board. Dated: _____

EXHIBIT C

PROPOSED NOTICE

PROPOSED NOTICE

SERVICE DATE - _____, 2012

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DEPARTMENT OF TRANSPORTATION
Surface Transportation Board

[STB Docket No. 38302S, 38376S]

U.S. Department of Energy and U.S. Department of Defense v. Baltimore & Ohio Railroad Company, et al.

On _____, the U.S. Department of Energy and the U.S. Department of Defense ("Government") filed a joint motion with BNSF Railway Company ("BNSF"), asking the Board to approve a Settlement Agreement relating to the above docketed proceedings. A copy of the Settlement Agreement is attached hereto and is being published herein for comment of interested persons. BNSF concedes market dominance over all commodities and shipments covered by the Agreement for purposes of the joint motion.

The parties to the Settlement Agreement note that these dockets are the last of the complaint proceedings that were filed in numerous dockets with the Interstate Commerce Commission, this Board's predecessor agency, pursuant to the Staggers Rail Act of 1980. The present docketed complaint named all the major railroads operating throughout the nation. The proposed Settlement Agreement covers the rates and service of BNSF.

Previously, the Board approved a settlement with Union Pacific Railroad ("UP") on July 27, 2005. The Settlement Agreement with UP successfully resolved all rate-setting, shipping and service determinations between UP and the Government, and it has governed those parties' relationship with respect to the shipment of spent fuel since the date it took effect, without substantial issue. That settlement has served as a model to the Government for the current Settlement Agreement with BNSF.

The current Settlement Agreement is substantially similar to the Government's agreement with UP. Some improvements in that document have been made including streamlining unnecessarily redundant clauses and sample forms, clarifying or elaborating on definitions and accepted practices, revising clauses to reference an updated Uniform Rail Costing System and making explicit certain legal standards which are applicable, regardless of their inclusion in the Agreement.

One substantive difference between the UP agreement and the current agreement is that, while the UP agreement had an unlimited term, the BNSF Settlement Agreement provides for a term of 25 years, with the possibility of extensions.

The parties to the Settlement Agreement stress its wide coverage of future Government shipments of all types of radioactive materials and related commodities. The Settlement

Agreement addresses the elements of service required of BNSF in moving spent fuel. The parties' agreement rests on the common carrier obligations of BNSF and, at the same time, resolves issues relating to more specific elements of required services.

The parties further stress the flexibility provided the Government under the Settlement Agreement for future service of the involved commodities; the greatly reduced rates from the current levels for both regular common carrier service and for dedicated train service; and the full settlement of outstanding reparations claims of the Government against BNSF. The parties request Board approval of the Settlement Agreement and the prescription of the agreed rate methodology for establishing future rates for the covered movements.

The Government and BNSF ask the Board to prescribe the rate methodology and the maximum revenue-to-variable cost ("R/VC") ratios to which they have agreed for the commodities and rail services that are the subject of the Settlement Agreement. The movements which are at issue in these proceedings are nationwide except for excluded local movements originating and terminating in the East. The Interstate Commerce Commission ("ICC") prescribed a local and proportional Eastern rate basis in 1981 and that rate is not in issue.

This is a global settlement between the Government and BNSF, settling all matters in controversy between the parties. Consequently, the Government and BNSF join in seeking dismissal of BNSF as a party in any further proceedings connected with the subject complaints. Further, the parties request that the Board order that BNSF is released from liability for reparations or from paying contribution if any connecting carriers are held liable for reparations on past through movements.

The Government and BNSF further request the Board to approve their Settlement Agreement without prejudice to the Government's complaints and other actions insofar as they involve all other carriers in these proceedings. The Settlement Agreement does not purport to resolve any of the issues which still exist for the other remaining defendants.

All filings in response to this notice must refer to STB Docket Nos. 38302S and 38376S, and must be sent to: (1) Surface Transportation Board, 395 E Street, SW, Washington, D.C. 20420-0001; (2) Jill K. Mulligan, Senior General Attorney, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, TX 76131; and (3) Stephen C. Skubel, Assistant General Counsel for Litigation, Room 6H-087, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, D.C. 20585. Responses to this notice are due on or before 45 days from the publication of the notice. Replies to the responses by the parties to the settlement agreement are due 30 days thereafter.